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FISCAL IMPACT REPORT



SPONSOR: Stewart DATE TYPED: 2/11/02 HB 406/aHGUAC

SHORT TITLE: Curfew Ordinances SB _____

ANALYST: Dunbar

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------------------------------|----------------------|---------------|
| FY02 | FY03 | FY02 | FY03 | | |
| | | \$0.1 | Significant See Narrative | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received

Children Youth and Families Department (CYFD)

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

NM Department of Public Safety (NMDPS)

SUMMARY

Synopsis of HGUAC Amendment

The House Government and Urban Affairs committee amendment adds language outlining the conditions as to when a child may be taken into protective custody. Also, the department must make reasonable efforts to determine whether the child is an Indian child. In addition, the amendment provides for punishment of a person who interferes with placing the child in protective custody.

Synopsis of Bill

House Bill 406 creates a new section of the Children's Code to authorize counties and municipalities to adopt curfew ordinances for nighttime hours and to regulate children's daytime actions subject to the provisions of the Compulsory School Attendance Law. The bill requires any curfew ordinance to include various exceptions, such as when a child is (1) in the presence of a parent or legal guardian, (2) in the presence of a person approved by the parent or legal guardian, (3) traveling interstate,

(4) going to or from a school-sponsored event, (5) going to or from work, (6) involved in an emergency, (7) on a public street or sidewalk in front of his own home or the home of a consenting adult neighbor, and (8) exercising first amendment rights.

The bill also requires a curfew ordinance to provide for the detention of a child believed to be in violation of the curfew by a law enforcement officer. Such detention can continue until the following day. Any child detained for more than two hours must be taken to a "protective custody facility" that is not a juvenile or adult detention facility or jail. The bill confers original exclusive jurisdiction on the municipal or magistrate court over curfew violations. The bill also requires a curfew

ordinance to establish punishment in the form of forty-hours of community service and a fine not to exceed three hundred dollars and restitution for the actual costs of the protective custody.

Significant Issues

Apparently, this bill is a response to the Supreme Court's decision in American Civil Liberties Union of New Mexico v. City of Albuquerque, 1999-NMSC-044, 128 N.M. 315. In that case, the Court held that the Children's Code preempted the City from enacting a curfew ordinance that established criminal sanctions for activity that is not a crime when committed by an adult.

CYFD expresses concern that there is no definition of a "protective custody facility" and no means to determine if any such shelter exists in a community. If the youth violates an ordinance three times within a six-month period, then a referral to CYFD is made. Since this is not a delinquent act, juvenile probation has no sanction available. The family in need of services statute's remedy is removal from the home only if voluntary services rejected.

FISCAL IMPLICATIONS

The AG reports that this bill has some fiscal implications for the Criminal Appeals Division. Last year, in response to an identical bill, the Public Defender Department estimated that the bill would require five additional public defender positions. If that is the case, then at least one additional position in the Criminal Appeals Division could be needed as a result of this bill.

NMDPS notes the possibility of overtime issues when an officer has to either transport long distances for these facilities or staying with the juvenile until arrangements can be made for their release to a parent.

CYFD indicates that the bill can also lead to an increased number of contacts with law enforcement resulting in juvenile probation violations for technical reasons, but these violations can lead to forty-eight hour detention holds. That process would increase the cost to both juvenile probation and juvenile detention costs.

ADMINISTRATIVE IMPLICATIONS

This bill could have an impact on the caseload of the Criminal Appeals Division in the AGO. It is highly likely, that the number of juvenile delinquency petitions will significantly in

crease as a result of searches that will occur during the detention for a curfew violation. These cases will, in turn, cause an increase in the number of appeals of delinquency dispositions. The impact could be significant.

DPS is concerned that performance measures may be impacted because officers may have to wait for two hours before they can transport to a holding facility.

If the bill is enacted and counties and municipalities adopted curfew ordinances, AOC reports that there would be an increase in the caseload for courts of original jurisdiction, municipal, metropolitan and magistrate courts. Additionally, AOC points out that additional cases would require more funds to adjudicate. The fiscal implications would be commensurate with the number of cases adjudicated and cannot be determined at this time.

Moreover, the origination of a petition for an abuse and neglect case by CYFD creates a greater fiscal impact to the judiciary. The courts would incur the cost of appointing a guardian ad litem (GAL) for the child from the Children's and Protected Persons Representation Fund. If there is an increase in abuse and neglect cases, the AOC may have to increase funds to the Court Appointed Special Advocate (CASA) program to train more CASA volunteers.

There will also be an additional fiscal impact to tracking whether a minor has had three curfew ordinance violations within a six-month period.

Adjudication of curfew ordinance violations would increase the caseload of municipal, magistrate and metropolitan courts. An increase in abuse and neglect cases would increase the district court caseload.

TECHNICAL ISSUES

The bill requires the placement of a child in a "protective custody facility" under certain circumstances. However, the bill does not define what a "protective custody facility" is, other than to say it is not a juvenile or adult detention facility or jail.

Holding facilities for juveniles need to be identified or funded.

This bill, according to CYFD, appears to grant legislative authority contained in the Children's Code to local governments.

OTHER SUBSTANTIVE ISSUES

A curfew ordinance that requires detention of a juvenile based solely on the time of day is very likely to be found a violation of due process and first amendment rights according to the AGO. Courts in other states, and at least one New Mexico Supreme Court Justice, consider curfew ordinances to be unconstitutional because they place impermissible burdens on parents' fundamental rights and unreasonable time, place and manner restrictions on children's First Amendment rights.

Another concern expressed by CYFD is that if protective custody facilities do not exist in a community and a parent is unavailable, then the youth would either be placed in substitute care or juvenile detention. CYFD notes that substitute care resources would be unreasonably expended under these circumstances, and juvenile detention is not an appropriate placement for a status offender.